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No. 06-1456

FILED
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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

HUMBERTO FIDEL REGALADO CUELLAR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

JOINT APPENDIX

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Petition for Certiorari Filed May 3, 2007
Certiorari Granted October 15, 2007

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APPENDIX A

CHRONOLOGICAL LIST OF DOCKET ENTRIES

I. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (SAN ANGELO)

(Case No. 6:04-cr-00055) ALL DEFENDANTS

07/20/2004 COMPLAINT as to Humberto Fidel Regalado Cuellar (1). (mrr)[6:04-mj-00099] (Entered: 07/20/2004)

08/18/2004 INDICTMENT as to Humberto Fidel Regalado Cuellar (1) count(s) 1. (mrr) (Entered: 08/19/2004)

09/01/2004 Minute Entry for proceedings held before Judge Nancy M Koenig : Arraignment as to Humberto Fidel Regalado Cuellar (1) Count 1 held on 9/1/04., Plea entered by Humberto Fidel Regalado Cuellar : Not Guilty on count 1. Trial set for 10/4/04. Deft waived reading of indictment. (Tape #1348(2266-3080).)(Interpreter Isabel McSpadden.) (mrr) (Entered: 09/01/2004)

10/12/2004 MOTION to Deny Govt's Expert Testimony as Sanction for Violations of this Court's Discovery Order, and as Alternative Sanction, Deft's Motion for Continuance by Humberto Fidel Regalado Cuellar (blr,) (Entered:

10/12/2004)

10/12/2004 ORDER denying [38] Motion to Deny Govt's Expert Testimony as Sanction for Violations of this Court's Discovery Order, and as Alternative Sanction, Deft's Motion for Continuance as to Humberto Fidel Regalado Cuellar (1) (Signed by Judge Sam R Cummings on 10/12/2004) (blr,) (Entered: 10/12/2004)

10/12/2004 Minute Entry for proceedings held before Judge Sam R Cummings : Day 1 of Jury Trial as to Humberto Fidel Regalado Cuellar held on 10/12/2004; jury impaneled; jury selected; jury sworn, Govt & Deft evidence presented; Deft detention continued; Court adjourned until 8:30 am 10/13/2004 (See document #40 for image of minute order). (Court Reporter Mechelle Daniel.)(Interpreter Isabel McSpadden.) (blr,) Modified on 10/13/2004 (blr,). (Entered: 10/13/2004)

10/13/2004 Minute Entry for proceedings held before Judge Sam R Cummings : Second Day of Jury Trial as to Humberto Fidel Regalado Cuellar held on 10/13/2004; Govt & Deft evidence concluded; final arguments; Court's charge to jury; jury deliberating; jury verdict rendered; jury trial ends; ex-

hibits returned to counsel; (Court Reporter Mechelle Daniel.) (Interpreter Isabel McSpadden.) (blr,) (Entered: 10/13/2004)

10/13/2004 JURY VERDICT as to Humberto Fidel Regalado Cuellar (1) Guilty on

Count 1. (blr,) (Entered: 10/13/2004)

10/25/2004 MOTION for Judgment of Acquittal, to Set Aside Verdict by Humberto Fidel Regalado Cuellar with Brief in Support. (blr,) (Entered: 10/25/2004)

10/26/2004 ORDER denying [49] Motion for Judgment of Acquittal as to Humberto Fidel Regalado Cuellar [(1); denying [49] Motion to Set Aside Verdict] as to Humberto Fidel Regalado Cuellar (1) (Signed by Judge Sam R Cummings on October 26, 2004) (mrr) (Entered: 10/26/2004)

11/12/2004 TRANSCRIPT of Proceedings as to Humberto Fidel Regalado Cuellar

held on 10/12/2004 Trial - Volume 1 of 2 before Judge Sam R. Cummings. Court Reporter: Mechelle Daniel. (blr,) (UNDER SEPARATE COVER) Modified on 2/17/2005 (blr,). (Entered: 11/15/2004)

11/15/2004 TRANSCRIPT of Proceedings as to Humberto Fidel Regalado Cuellar

held on 10/12/2004 Trial - Volume 2 of 2 before Judge Sam R. Cummings. Court Reporter: Mechelle Daniel. (blr,) (UNDER SEPARATE COVER) Modified on 2/17/2005 (blr,). (Entered: 11/15/2004)

01/06/2005 Minute Entry for proceedings held before Judge Sam R Cummings : Sentencing held on 1/6/2005 for Humberto Fidel Regalado Cuellar (1),; Objections to PSI heard and overruled; PSR w/addendum adopted; Deft advised of right to appeal; Deft remanded to custody; Count(s) 1, Deft committed to custody BOP 78 months; Deft placed on Supervised Release 3 years; $100.00 MSA. (Court Reporter Mechelle Daniel.) (Interpreter Isabel McSpadden.) (blr,) Modified on 1/6/2005 (blr,). (Entered: 01/06/2005)

01/06/2005 JUDGMENT Humberto Fidel Regalado Cuellar (1), Count(s) 1, Deft committed to custody BOP 78 months; Deft shall remain in custody pending service of sentence; Deft placed on Supervised Release 3 years w/standard & 2 special conditions; $100.00 MSA (Signed by Judge Sam R Cummings on 1/6/2005) (blr,) (Entered: 01/06/2005)

01/14/2005 NOTICE OF APPEAL by Humberto Fidel Regalado Cuellar (mrr) (Entered: 01/14/2005)

02/03/2005 TRANSCRIPT of Sentencing Hearing filed as to Humberto Fidel Regalado Cuellar for dates of 1/6/2005 before Judge Sam R. Cummings, re 57 Notice of Appeal - Final Judgment. Court Reporter: Mechelle Daniel. (mrr) (UNDER SEPARATE COVER) Modified on 2/17/2005 (blr,). (Entered: 02/04/2005)

02/28/2007 MANDATE of USCA (certified copy) as to Humberto Fidel Regalado Cuellar - JUDGMENT ON REHEARING EN BANC - ordered and adjudged that judgment of District Court is affirmed; Circuit Judge Smith w/whom Circuit Judge DeMoss joins dissenting; Circuit Judge Dennis dissenting; Issued as Mandate 2/26/2007 (blr) (Entered: 02/28/2007)

02/28/2007 Opinion of USCA (certified copy) in accordance with USCA judgment re 57 Notice of Appeal - Final Judgment filed by Humberto Fidel Regalado Cuellar - Cuellar's conviction is AFFIRMED; Circuit Judge Smith w/whom Circuit Judge DeMoss joins, dissenting; Circuit Judge Dennis, dissenting. (Attachments: # 1 pages

35 to end) (blr) (Entered: 02/28/2007)

II. UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(Case No. 05-10065)

9/27/05	Unopposed motion filed by Appellant Humberto Fidel Regalado Cuellar to increase oral argument time by at least 20 minutes, thereby allowing the parties at least an additional 10 minutes each [5275505-1] Date of COS: 8/31/05 Sufficient [Y/N]: y [05-10065] (agl)
11/1/05	COURT Order filed denying unopposed motion for additional argument time [5275505-1] Copies to all counsel. [05-10065] (pft)
11/7/05	Oral argument heard. Case argued by Jerry V Beard for Appellant Humberto Fidel Regalado Cuellar, Denise B Williams for Appellee USA [05-10065] (pft)
2/22/06	Opinion filed. Issd in T form? Y Mandate pull date is 3/15/06. [05-10065] (rmf)
2/22/06	Judgment entered and filed. [05-10065] (rmf)

6/30/06	COURT Order filed granting petition for rehearing en banc [5400581-1] with Argument (Y/N)? y Before: All Active Judges A/Pet Supplemental Brief due on 7/31/06 for Humberto Fidel Regalado Cuellar. E/Res Supplemental Brief due on 8/30/06 for USA. Counsel notified via e-mail. [05-10065] (gam)
6/30/06	Case reopened. [05-10065] (gam)
9/27/06	Oral argument heard En Banc. Case argued by Nancy E Larson for Appellee USA, Jerry V Beard for Appellant Humberto Fidel Regalado Cuellar . [05-10065] (sme)
2/2/07	Opinion filed. Issd in T form? y Mandate pull date is 2/23/07. [05-10065] (jma)
2/2/07	Judgment entered and filed. [05-10065] (jma)
5/16/07	Supreme Court notice that petition for certiorari was filed on 05/03/07 by Appellant Humberto Fidel Regalado Cuellar. Supct No.: 06-1456 [05-10065] (cav)
10/29/07	Supreme Court order received granting petition certiorari [5752604-1] by Appellant Humberto Fidel Regalado Cuellar on 10/15/07. [05-10065] (cav)

10/29/07	Record on appeal requested from the district court for the Supreme Court. [05-10065] (jtr)
10/29/07	Certified record on appeal transmitted to United States Supreme Court. 5th Cir. Vols: 1 [05-10065] (gmr)

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	Criminal No.
	§	6-0CR 055 C
HUMBERTO FIDEL	§	
REGALADO CUELLAR	§	

INDICTMENT

The Grand Jury Charges:

Count One
Laundering of Monetary Instruments
(Violation of 18 U.S.C. § 1956(a)(2)(B)(i))

Beginning on or about June 28, 2004, and continuing to on or about July 14, 2004, in the San Angelo Division of the Northern District of Texas and elsewhere, **Humberto Fidel Regalado Cuellar**, defendant, did knowingly and willfully transport and attempt to transport funds, that is, approximately $83,235 in United States currency, through the Northern District of Texas, in the United States, to a place outside the United States, that is, Acuña, Coahuila, Mexico, knowing that the funds involved in the transportation represented the proceeds of some form of unlawful activity and knowing that such transportation was designed in whole or in part to

conceal and disguise the nature, location, source, ownership and control of the proceeds of specified unlawful activity, to wit: the trafficking of controlled substances in violation of Title 21, United States Code, Sections 846 and 841(a)(1).

In violation of Title 18, United States Code, Sections 1956(a)(2)(B)(i) and 2.

A TRUE BILL:

s/ [illegible]
FOREMAN

RICHARD B. ROPER
UNITED STATES ATTORNEY

s/ Amanda Burch
AMANDA R. BURCH
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

THE UNITED STATES OF AMERICA

v.

HUMBERTO FIDEL REGALADO CUELLAR

INDICTMENT

18 U.S.C. § 1956(a)(2)(B)(i)
18 U.S.C. § 2
LAUNDERING OF MONETARY INSTRUMENTS
AIDING AND ABETTING

(ONE COUNT)

A TRUE BILL s/ [illegible]

Lubbock Foreman

Filed in open court this 8th day of August, 2004

Clerk

DEFENDANT IN FEDERAL CUSTODY

s/ Nancy M. Koenig
UNITED STATES MAGISTRATE
~~DISTRICT~~ JUDGE

APPENDIX C

EXCERPTS FROM TRIAL TRANSCRIPT PART 1 OF 2

Direct Examination by Ms. Williams

Witness: Kevin Herbert

[54]

Q. **[MS. WILLIAMS]** Now, 277, where does it–from Eldorado, if you go south, where do you go?

A. **[KEVIN HERBERT]** You go down toward Del Rio and into Mexico.

Q. It goes all the way to the Texas/Mexico border?

A. Yes, ma'am, it does.

Q. Okay. To Del Rio. And what is the city just on the other side of the river in Mexico?

A. Acuna, Mexico.

* * *

[55]

Q. Okay. All right. I want to recall your attention back to 7 July 14th of this year and ask if you became involved in an investigation concerning Mr. Cuellar, the defendant.

A. Yes, I did.

Q. And is this Mr. Cuellar, the person that you came in contact with that evening?

A. Yes, ma'am, it is.

Q. About what time of the day or night did you first come into contact with him?

A. It was evening time, a little after 8:00. It was the summer, so it was just before sunset.

Q. What were the circumstances around you and he coming into contact?

A. At that time–I think it was about 8:20 in the evening–I was on traffic road patrol traveling northbound on Highway 277 south of Eldorado. I did observe a white VW bug traveling southbound approaching me. The vehicle appeared to be going very slow. I did–I did clock the vehicle, and it was doing 40 miles per hour in a 70 zone. As I was doing this, I observed that the vehicle

[56]

drove off onto the–off the roadway, onto the shoulder. Looking around, he was the only vehicle on the road, and I didn't see no reason for him to do that. At this time, I figured he–I had a feeling he might–or a suspicion he may have been intoxicated. I passed the vehicle and I turned around, checked–further checked the vehicle, and he did come back onto the roadway. After I got behind the vehicle, I also noticed the vehicle was not displaying a registration or a license plate for that vehicle.

Q. So you had been going–you were south of Eldorado, but you had been going north on 277?

A. Yes, ma'am.

Q. And is that two lanes going north and two lanes going south?

A. It's one lane going north and one lane going south.

Q. Okay. It's just one lane in that area?

A. Yes, ma'am.

Q. So you're going north, and you see a car, this small Volkswagen, coming toward you?

A. Correct.

Q. Appeared to be going slowly?

A. Yes, ma'am.

Q. Now, were you able to clock him as he was coming toward you?

[57]

A. Yes, ma'am. I clocked him doing 40 miles per hour in a 70 zone.

Q. You see him go off the roadway, and then you turned around and got in behind him?

A. Yes, ma'am.

Q. Did you stop Mr. Cuellar's car?

A. Yes, I did.

Q. Where did you stop him?

A. It was approximately 2 miles south of Eldorado in front of the Niblett's Oil Field Services Company, which is south of Eldorado, just in front of that.

* * *

[58]

Q. Does Mr. Cuellar speak English, or did he speak English with you?

A. No, he didn't.

Q. Do you speak Spanish?

A. No, I don't.

Q. Any conversations that are picked up on the video with Mr. Cuellar, are they in Spanish?

A. Yes, Spanish and English.

Q. He's speaking in Spanish, but eventually did you have someone to help you in interpreting?

A. Yes, ma'am, I did.

* * *

[59]

Q. When you first stopped Mr. Cuellar and you approached his car, what did–did you tell him who you were?

A. Yes, ma'am. I identified myself and I asked him for his driver's license and insurance. Because of the language problem–he indicated he did not speak any English, so the best Spanish I could do, which is little to none, I asked him for his driver's license, and he gave it–gave me a Mexico driver's license.

Q. When you first walked up to his car and asked him for his driver's license and insurance, did you know then that he couldn't–or he wasn't speaking English?

A. Yes, after I started talking to him.

Q. After you asked him for that, you realized that–

A. Correct.

Q. –you needed a Spanish speaker out there?

A. Yes, ma'am, I did.

Q. Were you able to– Besides the Mexican driver's license, was he able to provide insurance to you?

A. No, ma'am.

[60]

Q. When you realized that you wouldn't be able to talk to Mr. Cuellar, what did you do?

A. I called my dispatcher on the radio and had them to summon DPS Trooper Danny Nunez, because I knew he was working at the time and I knew he would be able to interpret for me.

Q. He's a Texas Department of Public Safety trooper there in Schleicher County?

A. Yes, ma'am.

Q. And does DPS have their office actually in the Schleicher County Sheriff's Office?

A. Yes, they do.

Q. Did Trooper Nunez come there to the scene?

A. Yes, he did.

* * *

[61]

Q. What was your understanding of what Mr. Cuellar was saying?

A. From what information I could gather from Trooper Nunez, Mr. Cuellar did not have any insurance on the vehicle. He asked him where he was going, and he said he was going to Acuna, Mexico. He said he had been in San Angelo attempting to buy another vehicle. According to Trooper Nunez, he had been in the Texaco–I'm sorry, Texas for three days. He was on his way back because he couldn't find a car that he liked.

Q. Now, some of the information that Trooper Nunez gave you that he was getting from Mr. Cuellar, did you use some of that information in order to determine what you should do next there at the scene?

A. Yes. Trooper Nunez asked him if he was carrying any money, and Mr. Cuellar did produce a large sum of money, rolled up, out of his left pocket. He also told Trooper Nunez he didn't know how much money exactly he had. When Trooper Nunez asked him for consent to search the vehicle, he gave consent to search the vehicle. Trooper Nunez found a

[62]

Whataburger bag in the passenger compartment of the vehicle, and the bag on it had a receipt with a phone number on it.

* * *

[63]

Q. Do you see Government's Exhibit 4?

A. Yes.

Q. What is that?

A. It is a fast-food receipt for–a Whataburger drive-through receipt.

Q. This receipt was found inside of the Whataburger sack in Mr. Cuellar's car?

A. That's correct.

Q. Is there a phone number on the Whataburger receipt? Let me direct your attention to the bottom left–

A. Okay.

Q. –of that receipt.

A. Okay. Yes, ma'am.

Q. Okay. What is that phone number?

A. It's kind of hard to read. It's faded out a little bit.

Q. Does it start with 432?

A. 432, yes, ma'am.

Q. And do you know that to be an area code–

A. Yes, ma'am, I do.

Q. –for somewhere out in West Texas–

A. Yes, ma'am.

[64]

Q. –since they all changed from 915?

A. Yes, ma'am.

Q. At the time, did you–were you familiar with that 432 area code?

A. Yes, ma'am, I was.

Q. What is the area code in Eldorado?

A. It is 325.

Q. It's 325. What's the area code in San Angelo?

A. 325.

Q. And where do you know the 432 area code to be?

A. I have a friend of mine who works for the sheriff's office in Big Spring, which is Howard County, and his area code number out there is 432.

* * *

[65]

Q. And he didn't say anything about coming from Big Spring?

A. No, ma'am, he didn't.

Q. Was it a huge factor to you or was that one of those things that you just took note of?

A. I believed it was–he was trying to conceal something; he just–he left that out, and I believed that why he would want to go to Big Spring and not mention that instead of San Angelo was kind of out of the ordinary.

* * *

[66]

Q. On the Whataburger receipt, does it give a date and a time?

A. Yes. The date on there is July 14th, and the time on the receipt is 5:55 p.m.

Q. The date was the same date that you stopped him in Eldorado?

A. Correct.

Q. And if he had gone through the drive-through in Big Spring at 5:55 p.m., would–timewise, would that have been consistent with the time then he was in Eldorado?

A. Yes, ma'am, it would.

Q. What else did you find that was significant to you in Mr.–at that time in Mr. Cuellar's car?

A. He had given me some paperwork to the vehicle when I was trying to ascertain the insurance. He just gave it to me. Because of the language prob-

lem, we had a little problem understanding each other. And I did find some bus tickets.

Q. Now, the paperwork he gave you from the car, was that in an envelope that he got from the car?

A. Yes, ma'am.

Q. Where in the car did he get that?

A. The glove box.

Q. Now, when you had first started talking to him and he–did he get out of the car?

[67]

A. Yes, ma'am, he did.

Q. And did he go to anywhere around the car and do anything after he got out?

A. Yes, ma'am. He walked to the front of the vehicle while I was trying to ask him for his insurance the best way I could. On his own accord, he opened up the front hood area, which, on a VW, is the front–the hood is in the front of the vehicle instead of the back, and he just opened up the hood latch.

* * *

Q. Now, was this before Trooper Nunez got there?

A. Yes, it was.

Q. What did you see–we're going to–I don't know what you call that thing if it's in the front of the car. I'm just going to call it the trunk. What was in the trunk when he opened it?

A. There was the gas tank, spare tire, and nothing else.

Q. Did you ask him about–or when Trooper Nunez got there,

[68]

what was your understanding about what Mr. Cuellar was saying about his travels?

A. My understanding was he had been in Texas for three days, and like I say, he hadn't found a car and was on his way back home. We both thought this was not consistent with his story, because he did not have any clothing or any luggage in the vehicle.

* * *

Q. Now, as you searched further in the car, you found–I think you said you found some bus tickets.

A. Yes.

Q. And are those represented in Government's Exhibits 8 and 9?

A. Yes, they are.

Q. Now, on Government's Exhibit 8, does it have the name on there, the name of someone?

A. Yes. It has the name of the defendant.

Q. It has Humberto Cuellar on there?

A. Yes, it does.

Q. Now, this bus ticket, what is the date of issue?

[69]

A. Looks like the 13th of July of this year.

Q. July 13th. That would be the day before you stopped him in Eldorado?

A. Yes, ma'am, it is.

Q. And this ticket is for transportation on what bus company?

A. Kerrville Bus Company.

Q. From where to where?

A. From Del Rio, Texas, to Uvalde, Texas.

Q. And from Uvalde, where?

A. From Uvalde to San Antonio, Texas.

MS. WILLIAMS: If I may approach the map, Your Honor.

Q. (BY MS. WILLIAMS) So he had this bus ticket in his possession, and it was for–from Del Rio, which would be just– which would be south of Eldorado?

A. Correct.

Q. From Del Rio to Uvalde, which is between Del Rio and San Antonio?

A. Correct.

Q. And then from Uvalde to San Antonio?

A. Yes, ma'am.

Q. Okay. So going due east from Del Rio–

A. That's correct.

Q. –to San Antonio? Now, the bus ticket that he had in his possession in Government's Exhibit 9, what is the date–the departure date on

[70]

that?

A. The depart date on that says Tuesday, 13 July 2004.

Q. Okay. Departing from where?

A. San Antonio, Texas.

Q. At 7:05 that evening?

A. Yes, ma'am.

Q. All right. Going where?

A. To Big Spring, Texas.

Q. To arrive at what date at what time?

A. 14th of July at 1:20 in the morning.

Q. Okay. And then on to where?

A. On to Lubbock, Texas.

Q. And then where?

A. Tulia, Texas.

Q. And then where?

A. And to Amarillo, Texas.

* * *

[71]

Q. What time was it he was scheduled to arrive in Amarillo on the 14th?

A. 7:00 in the morning.

* * *

Q. Okay. After you found the bus tickets in his car and the other documentation that he gave you, what happened out there at the scene?

A. Trooper Nunez talked to him in Spanish, and he gave Trooper Nunez consent to search the vehi-

cle. We went up to the front area of the vehicle where he had raised up the hood, and looking at the gas tank, there was–the mounts that held the gas tank in place, they looked like they had been tampered with. What I mean by that, the paint had been scratched off on

[72]

the mounts and the screws themselves. And we also found two bolts laying on the–loosely on top of the gas tank.

Q. What about that was significant to you?

A. That indicated to me that–that's a consistent way of–you can hide narcotics or illegal contraband in the vehicle.

* * *

Q. At this point, during the conversation that Trooper Nunez was having with the defendant, were you catching a lot of what was being said?

A. Bits and pieces of it.

Q. Okay. All right. So he hands the money to Trooper Nunez?

A. Yes, and then Trooper Nunez takes it and starts sniffing on the money, and then he hands it to me and tells me to take a

[73]

sniff of it, and I did so.

Q. When you smelled the money, what did it smell like to you?

A. It smelled like marijuana, not burnt, but like it had been packaged with marijuana, like an old

scent type, not like you had smoked it, but like in a package.

Q. Not smoked marijuana, but raw marijuana?

A. Yes, yes.

* * *

Q. After you smelled it on the money, then what did you do?

A. Suspecting there might be some contraband in the vehicle, I did have my dispatcher summon Deputy Chatham and his K-9 dog to the scene.

Q. And the deputy came with the dog?

[74]

A. Yes.

* * *

Q. And did Deputy Chatham run his dog on the car?

A. Yes, he did.

Q. Okay. After he ran the dog on the car, what did you do next?

A. While he was doing that, I summoned a border patrol agent to the scene to check his immigration status, and he–Agent Coronado was nearby. He showed up, and we had him check his immigration status, along with his border crossing record.

Q. Did it appear at that point that he was allowed to be in the United States on a border crossing card?

A. Yes, it did.

* * *

[76]

Q. How much money was he carrying in his pockets, including his wallet?

A. Two thousand dollars and two hundred and seventy-five–$2,275.

Q. And you counted that there in front of him?

A. Yes, ma'am, I did.

Q. After you counted the money and after the deputy got through in the car, how did you get Mr. Cuellar's car back to the Schleicher County Sheriff's Office?

A. While Deputy Chatham was further inspecting the vehicle, he found a hidden man-made compartment in the back of–behind the rear seat of the vehicle which had been covered up with–a plate had been taken out of it. The floorboard had been cut out and screwed back down with sheet-metal screws, and part of it was still sticking up. He was able to look in there and he saw these bundles of duct tape.

Q. And eventually did you see that also?

A. Yes, I did.

Q. Then at some point, you got the car–Deputy Chatham drove the car back to Schleicher County?

[77]

A. Yes, ma'am, he did.

Q. And had you placed Mr. Cuellar under arrest at that point?

A. Yes, ma'am, I did.

Q. Did you drive Mr. Cuellar back to Schleicher County

Sheriff's office?

A. Yes, ma'am, I did.

Q. And did Trooper Nunez go back to the Schleicher County Sheriff's Office?

A. Yes, he did.

* * *

[78]

Q. Now, the hidden compartment you're referring to, where in the car was it?

A. It was in the rear of the vehicle behind the passenger's seat. The passenger's seat on the VW are one big seat, and it

[79]

was directly behind that, and there was carpeting on top of–

Q. It had carpet on top of–

A. Yes, ma'am.

Q. –a piece of sheet metal that had been screwed down?

A. Correct.

Q. Was there anything on top of the carpet?

A. There was two car speakers in wooden boxes.

Q. So underneath the speakers, underneath the carpet, underneath this piece of sheet metal was these bundles?

A. Yes, ma'am, it was.

* * *

Q. And the next picture shows what?

A. It shows the glove box of the vehicle. We found a screwdriver and a Sharpie pen.

Q. And a Sharpie, is that like a marker?

A. Yes, ma'am.

Q. Now, what was significant about that screwdriver and the

[80]

Sharpie?

A. Well, I believed these items were consistent with what we found on the packaging. On the packaging themselves, when you took them out, it had numbers written on the duct tape, and–like dollar amounts. And the screwdriver was a Phillips-type screwdriver, which would match the type of sheet-metal screws that were on top of the cover on the hidden compartment.

* * *

Q. Tell us how else the packages were wrapped and what was in them.

A. There were blue Wal-Mart bags. They covered up blue Wal-Mart bags. Inside the blue Wal-Mart bags were large sums of U.S. currency.

Q. Was there something in writing on the outside of the packages on the duct tape?

A. Yes, ma'am. There were numbers.

Q. Numbers written?

A. Yes, ma'am.

Q. Ultimately did you discover that the numbers corresponded to something else related to the packages?

A. Yes, ma'am.

Q. What was that?

A. The dollar amount of what was in the–the money–the

[81]

amount of money that was in each package.

Q. Now, the numbers that were written on the outside of the package, did they appear to be written in marker?

A. Yes, ma'am, they did.

Q. Does the Sharpie pen–will it write on duct tape?

A. Yes, it will.

Q. And the numbers that were written on the outside of the packages corresponded with the amount of money contained within the packages?

A. Yes, it did.

* * *

Q. If you would, hold that up and show the

[82]

jury what that is.

A. These are the packages of duct tape, and this is the blue Wal-Mart bags that were wrapped inside the duct tape, and inside of that was what contained the currency, and this is what was in the back of the hidden compartment of the vehicle.

Q. After you got all the money out of the packages, what did you do with it?

A. I placed the packaging itself into our evidence vault, and myself and Sheriff David Dorne, we took the money over to the bank in Eldorado and had them count it for us.

Q. Counted the money, and then what did you do?

A. Brought it back to the office and placed it in the evidence vault also.

Q. At some point, did you deposit the money into a bank account so you weren't hanging onto all that money?

A. Yes, ma'am. The next morning, myself and the jail administrator went over to the bank and deposited the money.

Q. Including the amount that the defendant had on his person, how much did you deposit into the bank the next day?

A. $83,235.

* * *

Cross-Examination by Mr. Sloan

Witness: Kevin Herbert

[85]

Q. **[MR. SLOAN]** You found a Magic Marker in the glove box. Correct?

A. **[KEVIN HERBERT]** A Sharpie marker.

Q. Okay. Sharpie marker. Did you–when you sent the packaging to the lab, did you send the marker along also to see if it was the same marker?

A. No, I didn't.

Q. Did you check the marker for fingerprints?

A. No, I didn't.

Q. You did have the packaging checked for fingerprints. Correct?

A. Yes. Correct.

Q. You had Mr. Cuellar Regalado–you had his fingerprints. Correct?

A. Correct.

Q. And you were unable to find any fingerprints of his on the packaging, on the marker, or the screwdriver in this case. Correct?

A. Correct.

* * *

[86]

Q. You never sent any of the money to the lab, did you?

A. No, sir, I didn't.

Q. When you counted the money, you arrayed it, I believe in your office, on a table for photographing. Correct?

A. Correct.

Q. And you put the money on the same table as the money you had taken from Mr. Cuellar's pockets. Correct?

A. Correct.

Q. And then you put all the money in the evidence vault and then to the bank. Correct?

A. Correct.

Q. This was a substantial amount of money. Is that fair to say?

A. Yes, sir, it was.

Q. Including at least $1600 that you and the trooper indicated smelled like marijuana. Correct?

A. Correct.

Q. You waited until the bank opened; then you put it in the bank and you got a receipt. Correct?

A. That's correct.

Q. So that money is back in circulation. Correct?

A. Correct.

Q. Did you direct the bank to disinfect or remove the smell from that money in any way?

[87]

A. No, I didn't.

* * *

[91]

Q. In fact, in addition to the bus tickets, you also found some other type of paperwork in the car. Correct?

A. Correct.

Q. Among those items of paperwork was a–were three Spanish permits to operate without plates. Correct?

A. I believe so.

Q. And one was in his name dated June 28th, 2004. Correct?

A. Correct.

Q. Another one in his name was dated April 17th of 2004?

A. Correct.

Q. And there was another one in the name of David Rodriguez Aleman dated May 18th of 2004, wasn't there?

A. Correct.

Q. Okay. So he indicated to you later on in conversations that other people had been using his car. Correct?

A. Earlier. Correct.

Q. All right. And the paperwork supported that?

A. Correct.

* * *

Redirect Examination by: Ms. Williams

Witness: Kevin Herbert

[96]

Q. **[MS. WILLIAMS]** You did send the packages, as well as some other things, to the lab to see if they could get fingerprints off of them?

A. **[KEVIN HERBERT]** Correct.

Q. And specifically Mr. Cuellar's fingerprints?

A. Correct.

Q. Were they able to do that?

A. No.

Q. In your experience as a law enforcement officer, does that–is that significant to you?

A. No, it's not.

Q. Why is it not?

A. A lot of them, if they're experienced enough, they will handle it with gloves and keep their fingerprints off of it, because you can–it's a known fact that you can get fingerprints off of duct tape and many other types of–even paper.

Q. Or maybe he wasn't the one that put them in the car?

[97]

A. Correct

* * *

Direct Examination by: Ms. Burch

Witness: Danny Nunez

[100]

Q. [BY MS. BURCH] How did you become involved in the encounter with the defendant?

[101]

A. [DANNY NUNEZ] Well, I was working regular patrol out on the highways, and I was called to assist Officer Herbert on a traffic stop. He was needing some translation. I'm fluent in Spanish, and I went and translated for him.

Q. At the time that you arrived, was–Deputy Herbert was where? Tell us what happened when you arrived.

A. When I arrived at the scene, I observed that he was driving a white Volkswagen. The hood, which is located in the front–or, excuse me, the trunk, which is located in the front, was open. Mr. Regalado was standing beside his Volkswagen with Officer Herbert in the rear of the Volkswagen.

* * *

Q. So did you, at that point, go and talk to the defendant?

A. Yes, ma'am, I did.

Q. What happened?

A. I went and I asked Officer Herbert what he needed, and he was looking for an insurance on the vehicle Mr. Regalado was driving. I asked Mr. Regalado if he had his insurance for his vehicle, and he told me he didn't have his insurance with him.

* * *

[102]

Q. Okay. At that point, did you ask any other questions of the defendant?

A. I noticed that he was real nervous, and I just asked him where he was coming from, and he stated Acuna, Mexico.

Q. And why were you asking him where he was coming from?

A. He seemed to be nervous. He wouldn't look me straight in the eyes or look at me at all when I was talking to him. That's one of the things that I've learned through my training and experience. A lot of times when you're talking to somebody

out on a traffic stop or a traffic accident and–anytime you're talking to them and you look away or look down, it shows that

[103]

they're either trying to hide something or being deceptive of the truth.

Q. So you started to talk to him. You asked him where he was coming, where he was going. What else did you ask him and what did he tell you?

A. Well, I asked him where he was coming from; he said Acuna. I knew this couldn't have been true, because he was headed the wrong way if he was coming from Acuna. I asked him again, "Where are you coming from," and he said San Angelo. I said, "Oh, what were you doing in San Angelo?" He said he went to go buy a truck. And while I was talking to him, I noticed that he had a large bulge in his front pocket, and–which made me think–I was not sure what it was. I had no–no idea what it could be.

Q. Did you ask him what it was?

A. Yes, ma'am, I sure did.

Q. And what did he tell you?

A. He told me it was money.

Q. Did you ask to see it?

A. Yes, ma'am, I did.

Q. And was he willing to show it to you?

A. Yes, ma'am, he was. Prior to me asking him if I could see it, I asked him how much money he had, and he said 600. And I asked again, "How

much?" And he said 1,600. I said, "Do you mind if I look at it?" He said, "No, I sure don't," and he

[104]

pulled it out.

Q. Was there anything about that that you took note of that may have stood out in your mind?

A. Yes, ma'am. When he pulled his currency from his front pocket, I detected the odor of marijuana. At no other time did 6 I smell marijuana until the money came out of his pocket. I noticed that it was–it appeared to be more than 1,600 that he had in his pocket.

* * *

Q. Was there ever a point during this conversation that you were having with the defendant that you became suspicious?

A. Yes, ma'am, there was.

Q. Can you tell us about that?

A. Yes, ma'am. The inconsistencies of his story, where he was coming from, the money, the odor of narcotics coming from the currency that he pulled out of his pocket. I found that there possibly could be something else that this traffic stop was fixing to lead into.

[105]

Q. Okay. So at the point that you became suspicious, what did you decide to do to address those suspicions?

A. Well, I asked Officer Herbert if he had asked for consent to look inside the vehicle since the trunk

was open, and Officer Herbert said, "No, I hadn't asked, but if you will ask him, that will be fine." I said, "Well, how is the trunk open?" He said, "He opened the trunk on his own."

Q. Did you think there was anything unusual about the–that he went and opened the trunk on his own without being asked?

A. Yes, ma'am. Through my training and experience, a lot of times when there is something illegal or criminal activity occurring inside the vehicle, a lot of times the person driving the vehicle will deter you to the front or to the side of the vehicle. And it's always been my experience to go to the opposite end of the vehicle, and usually that's where criminal activity has occurred.

Q. So at that point, did you ask the defendant for consent to search his car?

A. Yes, ma'am, I did.

Q. And did he give you that consent?

A. Yes, he sure did.

Q. And did you then search the car?

A. Yes, ma'am. I did a preliminary check of the vehicle. I looked inside the vehicle through the windows, went to the front of the vehicle. I noticed that the gas tank on these

[106]

VWs– Well, let me explain about the VWs. In Mexico, they are currently still made. They are not like the VWs that they make here. It's the old beetle wagon where the engine is in the back; the trunk is in the front. This vehicle was a '94

model, and currently, today, they still make these vehicles there in Mexico. I noticed that the front, where the gas tank is on the vehicle, it had two clamps holding down the gas tank. One of them was backwards. There was also fresh tool marks on both clamps. I also saw there was drill marks on the fender walls of the vehicle.

Q. And when you took note of those things, what about that is important to us here? Why do we care about the clamps and the tool marks?

A. Well, there was also some mud splashed throughout the vehicle that was inconsistent of somebody going through a mud puddle. And I've been able to apprehend other loads by taking note of this, which showed the mud–there was no way there was mud in certain areas without somebody putting it or splashing it on their–on their own. It appeared that they had used some type of an acoustic gun which you use to shoot acoustic to shoot mud. It even had the little specks, and they were perfectly formed, as you would see in a ceiling that had just been sprayed.

Q. So, Trooper Nunez, you believe that the mud on the car was

[107]

put there on purpose?

A. Yes, ma'am.

* * *

Q. And in your experience just being out on the road, what have you seen before with that same kind of thing?

A. A lot of times we'll have a vehicle that will come in and–or a vehicle that we stop out on a traffic stop and you will see mud splashed underneath or you will see oil, fresh oil with dirt thrown on it where the dirt sticks to the oil. And what this is used for a lot of times is that anytime we go underneath a vehicle to check the vehicle out, they will have this, and it's a cover-up, what I call a cover-up to cover up tool marks, fresh paint, just any work that they have done underneath the vehicle.

Q. I want to make sure–let's go back to the part about the gas tank and the screws. I want to make sure that the jury understands why you took note of a screw being on backwards and what you were talking about the gas tank. Can you explain that

[108]

to the jury?

A. Yes, ma'am. We've–through training and experience and schools that we've been through, there's been a lot of loads being carried inside gas tanks. Also, on the VW, there's a natural void underneath the gas tank. The natural void probably is about 12 to 18 inches, and there's nothing there. We have also came across compartments where you can go in through the fender wall of the front of the vehicle as you take

the wheels off. You can take that fender wall off, and there's usually–sometimes, not all the times, but there's contraband that's been hidden in there.

Q. As you searched the car, you have already testified that you noticed the gas tank, you noticed the mud. Was there anything else that you noticed when you were looking at the car that you found unusual or odd or suspicious?

A. Yes, ma'am. The interior of the vehicle was sun-faded. If you've seen a truck or you have a vehicle yourself that's been parked out in the sun and you don't put Armor All or something to protect the vinyl in it, the sun beats it down, turns it white. Even seats start to tear with the sun. I noticed that the seats weren't in very good shape, but the carpet in the vehicle appeared to be newer than the rest of the interior of the vehicle.

Q. And is that unusual, when you're looking at a vehicle, for the seats to look like they're older but the carpet to look

[109]

like it's newer?

A. No, not really, ma'am. But the carpet appeared to be newer, and sometimes, you know, you might replace your carpet because it wore out before your seats wore out. But as I looked to the rear of the vehicle, I noticed that there was some type of animal hair concentrated in one area, but there was no other area in the vehicle that had animal hair.

Q. Did you ask the defendant about the animal hair?

A. Yes, ma'am, I did.

Q. And what did he tell you?

A. He told me that prior to this date, he had gone to San Angelo and had purchased some goats and drove them back to Mexico.

Q. Did you find anything about that unusual?

A. I'm not sure how the goats would really fit back there. I guess they could fit. But if you're putting a dog or a cat or a goat inside a vehicle, you know, they will leave a trail of hair or some type of residue from their body throughout the vehicle. There was only this area. This was the only area that had animal hair.

Q. And where in the car was that area that you're talking about?

A. It was behind the back seat, in between the back window or the engine and the back seat.

Q. Okay. Was there anything else as you were looking at the

[110]

car? You have talked about the carpet, the tank, the animal hair. Anything else?

A. Yes, ma'am. I saw that he didn't have any hygiene with him, any clothes. There was some fast food–there was a fast-food restaurant bag that had an area code of 432, which I knew was not in the San Angelo area.

Q. And why did you find that, I guess–you said you found that odd. Why?

A. Well, first of all, he told me he was coming from San Angelo, and I knew that that Whataburger bag had a 432 area code on the receipt, and I knew that he must have had gone further down–I

guess you would say west, at least up to the Midland/Odessa area, because of the 432 area code.

Q. Okay. And you said you also found it odd that there were no–I think you said the word hygiene items.

A. Yes, ma'am.

Q. He didn't have any bags with him?

A. No, not at all. Other than that Whataburger bag, that's all he had with him.

Q. And why did you think that was odd?

A. Well, he told me he had been on a road trip for three days, and I couldn't–I just didn't understand why you wouldn't have any hygiene or any clothes to change for a three-day trip.

Q. Okay. Is it possible that he just might not have brought a bag with some clothes with him?

[111]

A. Yes, ma'am, it's possible.

Q. But you find that unusual?

A. Yes, ma'am. That's also one of the signs that we use during the interdiction, or anytime that we are interviewing a person on a traffic stop.

Q. Did there come a time during the course of the stop, after you had done this sort of initial look-through and you made note of all of these things that you've told the jury about, that you decided to investigate further?

A. Yes, ma'am, there was a time, and I asked Deputy Herbert if he could contact a K-9 unit and do a search on the vehicle with a K-9 unit.

Q. Now, did you make that call or did someone else make that call?

A. Deputy Herbert made that call, ma'am.

Q. Okay. And did, at some point, someone come with a K-9, with a dog?

A. Yes, ma'am.

Q. Okay. And did you ask the defendant if he would allow you to search the car using the dog?

A. Yes, ma'am, I did. I asked him in Spanish if he would allow us to use a K-9 to search his vehicle.

Q. And did he allow that?

A. Yes, ma'am, he did.

* * *

[114]

A. Well, we–myself and Officer Herbert started counting the money in front of Mr. Regalado. I asked him if he would cooperate–

Q. And are you–I'm sorry. Are you referring to the money that was in his pocket?

A. Yes, ma'am. I'm sorry.

Q. That's all right.

A. The money that he had in his right front pocket, I believe it was. We started counting the money in front of him, and I asked Mr. Regalado if he would cooperate with us, and it would be a whole lot safer if we were able to take the vehicle to the sheriff's office and off the roadway, not only for the officers' safety, but also for his safety, and do a closer inspection of the vehicle.

Q. And did Mr. Regalado Cuellar agree to that at that point?

A. Yes, ma'am, he did. He said he would be more than happy to.

Q. And is that what happened?

A. Well, as we were counting the money, there were several twenties and tens, and as we were counting, it took quite a–well, I'd say a little bit of time; I'm not sure how long. Officer Chatham was checking where his dog had indicated inside the vehicle. As we had completed counting the money, Officer

[115]

Chatham came out of the vehicle and said, "Hey, hook him up, hook him up," which means take custody or place him under handcuffs. And as we did that, he said that he had found a compartment in the back with some type of bundles.

Q. Okay. So Officer Chatham told you, as you were counting the money, to arrest the defendant because he had found the compartment with the bundles.

A. Yes, ma'am.

Q. Is that right?

A. That's correct, ma'am.

Q. Okay. So at this point, did you arrest the defendant?

A. At this point, ma'am, what we did is we handcuffed him and placed him into Officer Herbert's vehicle, I believe it was.

* * *

[116]

Q. Are you aware about what was found inside that secret compartment?

A. Yes, ma'am, I am.

Q. And what was that?

A. It was a large amount of U.S. currency.

Q. I think you have got right in front of you a package. That's it. Yes, pull that up.

A. Yes.

Q. And what's the government exhibit number on that?

A. This is Exhibit Number 5, ma'am.

Q. Exhibit Number 5. Is that what you found inside the compartment?

A. Yes, ma'am, it is.

Q. Okay. And what was inside that?

A. It had this gray tape with these Wal-Mart bags, and inside the Wal-Mart bags had a large amount of currency. Each one contained different amounts. It was written there on the gray tape how much it was on each one.

Q. Is there anything about the way that was wrapped like that that seemed suspicious to you in your experience?

[117]

A. Yes, ma'am. I saw that it had black markings or been written on with a black marker. And inside the glove box was a black marker.

* * *

[118]

Q. Trooper Nunez, what about that screwdriver in the glove box made you want to pick it up and mark it into evidence?

A. Ma'am, the compartment that was made on the vehicle had six screws, and it took the same tool that was in his glove box to remove the top to that compartment.

Q. Okay. So the screws that were on the top of that compartment were not a different type of screwdriver or a different size? They matched that one?

A. Yes, ma'am. They matched it just right.

* * *

[119]

Q. Thank you. Also in front of you there is something marked Government Exhibit Number 10. It's already been admitted into evidence. Do you see that? It's a plastic–

A. Yes, ma'am, I do.

Q. Okay. Is that written in English or Spanish?

A. This is in Spanish.

Q. And can you tell what that is?

A. It appears to be a traffic ticket.

Q. Can you look at the date on that traffic ticket? Can you find the date on there?

A. Yes, ma'am.

Q. And what is the date on that?

A. The date is May the 3rd, 2004.

Q. Okay. And in Mexico–check where it says under the line, because the numbers–

[120]

A. Okay. I'm sorry. They are backwards. Sorry. It was March the 5th, 2004.

Q. In Mexico, do they list the day and then the month?

A. Yes, ma'am. I'm sorry.

Q. So when you read it– So the actual date is March the 5th; is that correct?

A. That's correct, ma'am.

Q. Who is that ticket issued to?

A. Mr. Regalado Cuellar.

* * *

[121]

Q. Did he ask to use the rest room?

A. No–

Q. Did you allow it?

A. No, ma'am, he didn't ask to use the rest room. The only thing he asked to do was to use the telephone.

Q. And did you allow him to use the telephone?

A. No, ma'am. I told him that it would be a little bit, because the–it was still under investigation and that I would allow him to use the telephone once we completed our investigation.

[122]

Q. Did you in any way threaten him, hurt him, anything like that to make him talk to you?

A. No, ma'am, I did not. The only thing he was really worried about at that time that we were talking was to use the telephone, and he told me that if he didn't use the telephone and call his family in Mexico by midnight and the vehicle wasn't in Mexico by midnight, that his family would be floating down the river.

Q. Why didn't you allow him to use the telephone?

A. Because we were just initiating our–or in the middle of our investigation.

* * *

Cross Examination by Mr. Sloan

Witness: Danny Nunez

[130]

Q. **[BY MR. SLOAN]** All right. I would direct your attention to page–the

[131]

bottom of page 5. The question you asked him was in Spanish. The English translation is, "What do you have in your pockets?" Right?

A. **[BY DANNY NUNEZ]** Yes, sir.

Q. And he says–the Spanish–again, the translation, "I have money and an ID." You asked him, "Let me see the ID." He responded, "Okay." You asked him, "What do you have in the other pocket?" And he said, "It's $1600." The first time you asked him about the amount of money he had, he said $1600. Correct?

A. No, sir. He said $600.

Q. All right. So you disagree with the interpretation here? You think it was $600?

A. The first time, yes, sir.

Q. And to say in Spanish $1600, you would say (speaking in Spanish). Correct?

A. That's correct, sir.

Q. All right. So if, on the video, the first time you asked him how much money he had, he says (speaking in Spanish), he's saying $1600. Correct?

A. That's correct, sir.

* * *

[132]

Q. Had you taken the money out of his wallet and the money out of his pocket and combined them before you counted them?

A. No, sir. He had handed it to me, the roll of money, not the money from his wallet, I believe.

Q. All right. But when you counted the money, you counted all the money. Right?

A. Yes, sir.

Q. So in terms of how much was in the roll and how much was in his wallet, you can't say with certainty how much was in each, can you?

A. No, sir, I probably couldn't.

Q. Okay. So if he told you he had $1600 when he handed that to you, you would have no way to say that that's not correct?

A. No, sir, I sure wouldn't.

* * *

[135]

Q. When you took the screwdriver and the Sharpie marker out of the glove box, did you do that with your bare hands?

A. Yes, sir, I sure did.

Q. And you never bagged them or submitted–well, you did bag them, but you never submitted them for fingerprint analysis, did you?

A. No, sir, I never submitted that for fingerprint analysis.

Q. So you don't know if he ever actually touched those items?

A. No, sir. I had attempted to submit them into–for fingerprint analysis and I was told by the Texas Ranger that it would be easier if he would comply and give me some DNA or some saliva and we could check the DNA compared to the screwdriver and the marker to see if he had had any dealings with it, and the simple reason was because of the ridge in the material that these items are made with are real hard to fingerprint.

* * *

[138]

Q. All right. One of those is a permit to operate without plates issued in April of 2004 in the name of the defendant. Correct?

A. Yes, sir, that's correct.

Q. One of those is a permit issued in the month of May, year 2004, in the name of another person. Correct?

A. That's correct, sir.

Q. All right. And what was that name?

A. David Rodriguez Aleman.

Q. Okay. David Rodriguez Aleman?

A. Aleman, yes, sir.

Q. And on June 28, there's a permit issued in his name again. Correct?

A. And Humberto Fidel Regalado Cuellar, that's correct.

[139]

Q. Which is his name?

A. Yes, sir.

Q. The whole thing. Right?

A. Yes, sir.

Q. So at one point in May of 2004, someone else had legal permission to operate that vehicle. Correct?

A. Yes, sir.

* * *

Redirect Examination by Ms. Burch

Witness: Danny Nunez

[147]

Q. **[BY MS. BURCH]** When you actually found–and I know that you weren't the

[148]

person that found it, but when you became aware of the secret compartment that they found in the car, where was it?

A. **[DANNY NUNEZ]** The compartment was built between the engine compartment and the back seat, what I call the fire wall and what you would find as the fire wall inside the front end of your vehicle which separates you from the engine. After you come across your dashboard and then you've got that metal, well, this is what's behind in this VW, which the engine sits in the back.

Q. So it was in the back of the car?

A. That's correct, ma'am.

* * *

Direct Examination by Ms. Burch

Witness: Jason Chatham

[154]

Q. **[BY MS. BURCH]** How does he alert to the presence of the odor of narcotics?

A. **[JASON CHATHAM]** Brutus is an aggressive alert. You have aggressive alert and passive alert. Passive alert, when they detect the odor of a narcotic, they will sit. Aggressive alert, which Brutus is

[155]

aggressive, he will scratch when he detects the odor of a narcotic.

Q. And does he give a certain type of alert based on whether it's–you said he's certified on marijuana, methamphetamine, cocaine, heroin. Does he give

a different kind of alert if it's cocaine as opposed to if it's marijuana?

A. No, that doesn't make a difference. No matter what the drug is, he's going to give the same type of alert. It doesn't vary from drug to drug.

Q. On the day in question, turning your attention to now, when you arrived on the scene, did you ask the defendant for consent to search his car using the dog?

A. I asked Trooper Nunez to ask him, because I was under the impression that the–he did not speak English. I asked Trooper Nunez to ask Mr. Cuellar if I could run the dog around his vehicle, and Trooper Nunez did ask him. Mr. Cuellar did consent to a K-9 search of the vehicle.

Q. And so what happened next?

A. Conducted a free-air search around the vehicle. During that time, Brutus alerted to the passengers's-side door. After he alerted, I put him inside the vehicle. He alerted to the Volkswagen in the driver's seat. That would be–I could best describe it like right down on this part of the driver's seat right here. And then in the back seat, bucket seats, if you will, between the front driver's seat, came through here and

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gave an alert on the back seat, actually where the seat cushion–where you sit, in that area.

Q. After that happened, what did you do?

A. After that happened, I took him out of the car, and Deputy Herbert requested that I had–use

him to check some money that Cuellar had, I believe in his pocket.

Q. Okay.

A. So I instructed Deputy Herbert to put the money–cash currency that Mr. Cuellar had in his pocket in the glove box of the Volkswagen, and we let the–after he–after Deputy Herbert put the money in the glove box, we waited approximately five minutes, give or take, and conducted another search on the–on the car again at that time. The reason being for asking him to put the money in the glove box, that was before–prior to–on the original K-9 search, an alert was not given on the glove box or anywhere in that area, so I was–determined that was a good place, not-contaminated place, if you will, to put the money.

Q. And once you– You said you put the money in and you let it stay a few minutes.

A. Yes, ma'am.

Q. And then did you–

A. Approximately five minutes.

Q. Did you run the dog again?

A. I did. I put him back inside the car. Once again, he

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alerted to the driver's seat, back seat, and the glove box–

Q. So–

A. –whereas, prior, he had not alerted to the glove box.

Q. So on this second time, he did alert to the glove box when he hadn't the first time?

A. That's correct.

* * *

[158]

Q. And what did you find, or did you find anything?

A. Well, while I was inspecting the car, I noticed things that kind of–I guess you would say would catch my attention. One of the most obvious things to me was behind the upright part of the back seat, there's an area that I–I referred to it as a cargo area. I don't know if any of you have seen a Volkswagen before, a bug, but behind the–let's say this is the back seat, the backrest of the seat. There's an area probably about the same size as this area right in here, about so deep. Inside this– This was a carpeted area. Behind the seat, it had two 6-by-9 type speaker boxes. Well, in this area, there was a lot of white hair–it looked like animal hair–that was concentrated on this–on this–within this carpeted area where the speakers were. That caught my attention for the reason being it looked–to me, it looked like it had been intentionally placed there. In training and experience with K-9 handling, I know a lot of times hair is put

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in a car–animal hair–in an attempt–I say an attempt because it doesn't work–to distract a K-9 doing a search. That caught my eye initially. And there were other things on the outside of the vehicle if you would like me to get into that.

Q. We would love to hear it.

A. Inspecting the rear of the vehicle– On a Volkswagen, on a beetle, the engine compartment is in the back. I was looking at the fire wall between the engine compartment and the interior of the vehicle. Up in the uppermost part of the fire wall, I noticed markings, heat stress marks that are commonly caused from when some–when you weld metal–if you weld something to a piece of metal on this side, it causes a heat stress mark on the back side. And I noticed that in the engine compartment. After I saw these heat stress marks, I went back into the inside of the car and started looking around to see what had caused these heat stress marks, what had been welded, and I noticed two–in the–in the–in the cargo area, the back seat being here, the cargo area, the fire wall being here, there were two upholstery tabs holding the carpet up. Removed the upholstery tabs, and that's where two–I saw that two bolts had been welded to the fire wall to hold these tabs.

Q. Did that seem unusual to you?

A. It did. It did seem unusual because it didn't–number one, the tabs didn't go with the vehicle. This is an old–old

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Volkswagen, and these tabs looked new. I mean, they weren't worn like–pretty much the rest of the car was pretty worn, and these looked like they were fairly new.

Q. So what did you do next?

A. I removed the tabs, and there again, I exposed the bolts that had been welded on to secure the carpet. Pulled the carpet back to expose the floorboard of the car and, at that time, observed that a piece of the floorboard had been cut out. A square approximately this long, this wide of the floor had been cut out and was secured with, I think, six metal screws securing the cutout back to the floor. I lifted a corner of the piece of the cutout, shined my flashlight down in there into a–what appeared to be a false compartment, and I observed bundles–gray duct-tape bundles–I guess these here–down in the–in this false compartment.

Q. And what did you do at that point?

A. At that point, I notified Deputy Herbert to handcuff Mr. Cuellar.

Q. And did you have any idea at that point what was in the bundles?

A. At that point, from my experience, seeing that narcotics are commonly packaged this way, I believed that these bundles contained some type of narcotic, and that's why I had ordered him to handcuff Mr. Cuellar.

* * *

[161]

Q. And what was in the bundles?

A. The bundles contained U.S. currency.

Q. Money?

A. Yes, money. I'm sorry. Yes. American money.

Q. Can you tell us what denominations of money were in the bundles? Were you part of unwrapping it and looking at that?

A. I observed the money after–as it was being counted. There were fives, tens, twenties, fifties, hundreds. Just all–pretty much every denomination, so . . .

* * *

Cross-Examination by Mr. Sloan

Witness: Jason Chatham

[163]

Q. **[MR. SLOAN]** None of this money was ever sent to a lab or anything, was it?

A. **[JASON CHATHAM]** To my knowledge, no, sir, it was not.

Q. As far as a control procedure of using another dog to see if he alerted to the money, that wasn't done. Correct?

A. No. I trust my dog, and I didn't think it was necessary.

Q. Okay. Well, taking money from another source and comparing his reaction, that wasn't done?

[164]

A. No, sir.

Q. You're aware, as a trained dog handler, that a substantial amount of money in circulation has enough drugs on it to taint–to alert a dog; isn't that right?

A. I have heard of that before. Yes, sir, I have heard of that.

* * *

[165]

Q. Okay. So what you can learn from the dog is basically there's an odor of one of the drugs he's been trained to detect somewhere where he's scratching; is that right?

A. Yes. If there is an odor of a narcotic–

Q. Okay.

A. –in a particular area, yes, that's what he alerts to.

Q. All right. So the dog can't tell you how that residue got–or how that odor got there. Correct?

A. No, no, he couldn't do that.

Q. In a group of bills, he can't tell you which bills have it on them and which bills don't?

A. I've never–I've never tried that, so I don't–I don't know that he could or he couldn't actually.

Q. Okay. The dog can't tell you how long ago the smell got on the money or–wherever it got?

A. No, he couldn't tell me that.

Q. The dog can't tell you how many other hands the money has passed through?

A. No, wouldn't say so.

* * *

Direct Examination by Ms. Williams

Witness: Richard Nuckles

[171]

Q. **[MS. WILLIAMS]** Can you estimate the number of narcotics trafficking investigations you have participated in during your law enforcement career?

A. **[RICHARD NUCKLES]** In the last 17 years, it would–I wouldn't be able to put a number on it. It would be hundreds, several hundred.

Q. In Texas, as well as Arizona?

A. That's correct.

Q. Have you had the opportunity during your career, your law enforcement career, to interview people involved in the narcotics trafficking business?

A. Yes, several hundred.

* * *

[172]

Q. You're familiar with how a smuggling–or a narcotics organization–the make-up of a narcotics organization?

A. Yes.

Q. Have you been qualified and testified in both state or federal court as an expert in the area of southwestern drug smuggling?

A. Yes, ma'am.

Q. Would you talk to the jury about narcotics organizations. How do they operate?

A. A narcotics organization is a business. It's an illegal business, but it is a business. It's put together to make money. Marijuana is grown basically on plantations in northern Mexico. It is processed from those plantations, and then it is

either smuggled across the United States/Mexico border by the individual who is in charge of the plantation or owns the plantation, or the marijuana is sold to several smugglers. A smuggler is somebody who actually moves it across the border or orchestrates that movement. So marijuana is sold to several different smugglers, who then make arrangements to have it moved across the U.S./Mexico border into the United States.

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[173]

Q. Would you describe for the jury, from top, down, the kinds of jobs in a drug smuggling organization?

A. Usually if we're looking at it from a smuggling angle, as I said, a smuggler is the one who basically arranges or orchestrates the movement of marijuana across the U.S./Mexico border. Involved in that are individuals who procure equipment for that smuggler. They'll go out and buy cars. He has people who will build compartments in those cars if he's going to smuggle marijuana in a hidden compartment. They have–he has people who will actually package the marijuana and who actually load it into the vehicle and secrete it inside that vehicle.

* * *

[177]

Q. Within a drug smuggling organization, is there more concern about moving the marijuana or moving the cash that's generated?

A. In any drug smuggling organization, whether it's marijuana, cocaine, heroin, whatever they're moving, moving the dope is not the biggest problem. The largest problem that is

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faced by any drug smuggler, trafficker, any narcotics smuggling organization is what to do with their cash. Smuggling their cash is a lot harder or a lot more of a problem than smuggling the dope. They generate so much cash, and it is so huge an amount of paper in some cases, that they actually have a problem with just the bulk of their money and what to do with it. They can't, you know, just go down and deposit, you know, $100,000 in the bank without, you know, doing some paperwork that they don't want to do.

Q. What kind of paperwork has to be done if you deposit large sums of cash?

A. Well, for one thing, over $10,000, you have a cash transaction report that you have to fill out, and that entails giving a lot of personal information that they would rather not have known.

* * *

Q. So after people buy the marijuana in the United States and then somebody has all of this cash, what happens to all the

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cash? Are people paid or does it all go back to Mexico? How does that work?

A. Well, the drivers are paid. The people who have participated in the movement of the marijuana are paid. But the bulk of it generally goes back to

Mexico, because the smuggler is the one who originated this entire process. He's going to get a large cut of the profit, and that money has to be moved back to him in Mexico.

* * *

A. Money is moved in a lot the same way that drugs are moved. They are hidden. The money is going to be hidden, and it's going to be basically taken in secret back down to Mexico. In order to get it into Mexico, they have to get it across the border once again. That's–basically people will hide it in compartments, they will hide it in the lining of luggage or

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hide it in the sides of your door panels. There's hundreds of ways that money and drugs are hidden in vehicles or on somebody's person just to get it back across the border.

Q. You said that there are people along the way in various jobs and capacities that get paid. What are the different kinds of ways that someone might get paid for taking drug money back across the border?

A. Taking drug money back across the border, you're going to have basically someone who can hide it in the door panels, hide it in a secret compartment, somebody who is skillful in– Money is usually packaged in some way, wrapped in cellophane or duct tape or whatever, just to keep it in bundle shapes so it's easy to handle, and also to keep the amounts separate, $10,000 in each bundle, for instance. But you have someone who is skillful in hiding the money, and then you have

got to have somebody that is willing to drive it back into Mexico.

Q. If, for example, money is going to be taken back to Mexico in a car, is the driver necessarily the one that puts the bundles of money in the car?

A. No.

Q. Why–

A. Just like the driver is–

Q. Why is that?

A. Well, the driver is not the one who loads the marijuana in the car either, generally, to come north. The driver is the

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driver. He gets paid to drive that vehicle. In a lot of cases, information is compartmentalized, and he doesn't need to know anything more than what he needs to drive that money into Mexico, so . . .

* * *

Q. Are you familiar with vehicles being registered first in one name and then in another, depending on who may be driving a load?

A. Yes. Vehicles are registered to the driver in a lot of cases. Sometimes this is because the vehicle is part of his payment for driving the load. It also negates suspicion on the

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part of law enforcement if they stop this individual and the car is registered in his name.

* * *

Q. Would you describe for the jury what a cover scent, s-c-e-n-t, is, a cover scent?

A. Marijuana, because it has such a strong odor, is generally packaged in some way as to try to fool the drug dogs. I've seen it used–seen STP used between layers of cellophane to try to throw the dog off. Dryer sheets are a big one. They will have, you know, two or three boxes of dryer sheets packed in with it. Generally this doesn't work, but that's what it's used for.

* * *

[183]

A. If money were stored in the same place that marijuana was stored, the scent of the marijuana would permeate the money.

Q. And so the scent–do you have any idea how long the scent of marijuana would stay on money?

A. I really don't know. I have no idea. I think it would depend a whole lot on the conditions on which the scent was transferred to the money. Marijuana has a very strong odor when it's kept in, say, a hot environment, like an outdoor storage building at 110 degrees in the summertime, that sort of thing, has a very, very strong odor, whereas, you know, at 30 degrees in that same building, it may not put out as much odor.

Q. If it's tightly packaged, would it contain the odor stronger and longer?

A. If it was tightly packaged, I would assume it would, yes, because it was–you're containing that odor.

* * *

Q. Would you describe for the jury ways in which you know that drugs or drug money has been placed into someone's car without the driver actually being there and seeing it done?

[184]

In other words, is the car taken from a parking lot, loaded up, and then brought back to them?

A. Okay. I didn't understand your question there.

Q. I'm sorry.

A. Yes. If a load vehicle bringing marijuana from the border to Dallas, for instance–his destination is Dallas. It may go somewhere with someone else, you know, after that, but his destination is Dallas. He drives it to, say, a motel parking lot, just for an example. He will leave the keys under the floor mat, leave the car unlocked, and he will be instructed to get a room for 24 hours. He'll go in and get a room, and the next morning he will come back outside. His car is there, but the marijuana that was in his car is gone. During the night, someone has taken his car, unloaded the marijuana from the car, and brought the car back to the parking lot. Sometimes there is money in the dashboard–or in the glove compartment or hidden up under the dashboard, that sort of thing, that is his payment for bringing it up there. In that way, the driver that has brought the marijuana up never sees the recipients. He doesn't know who he delivered the marijuana to, but it was successfully delivered and he was paid.

Q. And can the same–does the same thing happen with money going back the other direction?

A. Yes. If they want–if–they can unload the marijuana and put the money right back in the same compartment for that

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matter, and he understands that after he comes back out the next morning, the marijuana is gone and the money is there; he's supposed to take the money back to whoever hired him in the first place in Mexico.

* * *

Cross-Examination by Mr. Sloan

Witness: Richard Nuckles

[188]

Q. **[MR. SLOAN]** Would you agree that, at street level, the Mexican economy is largely a cash-based economy?

A. **[RICHARD NICHOLS]** From what I've seen, yes, quite a bit.

Q. And in a border town like Acuna or Juarez, an American

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dollar will buy just about anything a peso will buy. Right?

A. Yes.

* * *

[192]

Q. You said sometimes the mule doesn't even know what he's carrying.

A. Right. He knows he's carrying narcotics, but he doesn't know whether it's marijuana, cocaine, heroin, whatever.

Q. Okay. Presumably, mules smuggling other items, same kind of procedure is followed?

A. Yes.

Q. Sometimes the mule isn't even told where he's going. Right? He's told to go meet somebody and they will tell him where to go. Right?

A. Well, usually he has a town that he's going to. He may have to make a phone call once he gets there and further

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arrangements are made as far as a meeting spot.

Q. One of the things that the mule isn't told is the correct name of whoever is giving him the stuff. Right?

A. In most cases. The mule– You're talking about the smuggler, right, that's giving him the marijuana to take north?

Q. That's right.

A. The smuggler usually is going to be known to the driver, or at least some lieutenant of the smuggler is going to be known to the driver. The driver usually is not aware of who the recipients are. In my Dallas example a while ago, the driver is usually not going to know who comes in the night and picks up his vehicle while he's asleep in a motel room. He'll never meet those people.

Q. Okay. So in terms of if the load gets intercepted or the mule gets intercepted, the less information

he has, the better it is for people higher up, because that's less that he can tell the authorities on. Right?

A. For the most part.

Q. You said that in moving currency, hidden compartments are sometimes used in vehicles. Correct?

A. Yes.

Q. Presumably those kind of compartments would be used for any kind of money smuggling. Right?

A. Sure.

* * *

[194]

Q. Okay. You indicated that the use of plastic and duct tape and masking things can be used to try to limit the smell of the drugs or the money. Correct?

A. Yes.

* * *

[195]

Q. So the ideal courier, if he's intercepted, is a person who can't name names or give information to move the investigation up the ladder. Right?

A. Sure.

* * *

Direct Examination by Mr. Sloan

Witness: Humberto Fidel Regalado Cuellar

[201]

Q. **[MR. SLOAN]** What do you do for a living?

A. **[HUMBERTO CUELLAR]** I'm a small businessman. I buy and sell vehicles.

Q. Where do you buy them?

A. Here in the U.S.

Q. Where do you sell them?

A. In Mexico. I always sell them in Mexico.

Q. Why do you sell American cars in Mexico?

A. Because sometimes you make twice as much benefit on them there. You can purchase a vehicle here for five hundred, seven hundred dollars and sell it in Mexico for about a thousand.

Q. In the course of your business, do you have authorization to cross the border?

A. Well, I pay my taxes in Mexico, and every time that I

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purchase a vehicle, I do have to pay taxes to the Mexican government for the sale of that vehicle.

Q. Okay. Are you allowed to cross the border legally?

A. Yes. I have been crossing the border legally for over four years.

* * *

[210]

Q. Okay. At some point, were you stopped by the police?

A. After leaving Eldorado, probably about 20 to 30 miles outside of San Angelo, the car broke down.

The switch did not work. The gear stick wasn't working anymore, and I had to drive about 18 miles an hour. And as I said, you know, leaving San Angelo, probably about 10 miles or so near Eldorado, the car stopped working, and I–all that I could drive it at was at 18 miles per hour, and I figured I would have to drive all the way to Acuna at that speed. At Eldorado, I stopped again, and I looked at another vehicle, but I didn't see the price. And right outside of Eldorado, the officers stopped me.

* * *

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MR. SLOAN: Your Honor, I would also make a Rule 29 motion at this time. I don't believe that the--I think that the government has failed to establish the elements of their case. I would ask that you direct a judgment of acquittal.

THE COURT: That motion is denied.

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